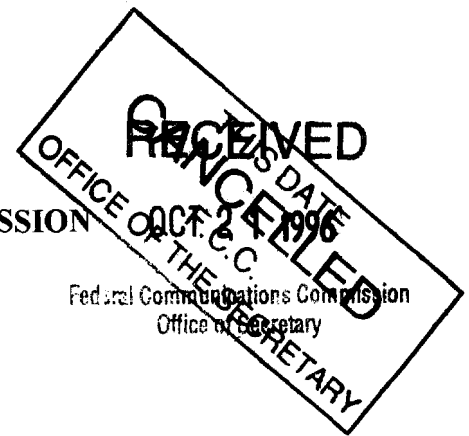


FCC MAIL ROOM

OCT 21 1996

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554



In the Matter of )  
)  
Amendment of Part 90 Concerning )  
the Commission's Finder's Preference Rules )  
)  
Comments of Patrick Electronics, Inc. )  
3701 Old Jenny Lind )  
Fort Smith, AR 72901 )

WT Docket No. 96-199

DOCKET FILE COPY ORIGINAL

The Federal Communications Commission has asked for comments concerning changes to the Finder's Preference Rules as they apply to services other than the 220-222 Mhz band, specifically the 470-512, 800 and 900 Mhz bands. Patrick Electronics, Inc. of 3701 Old Jenny Lind, Fort Smith, AR 72901, would like to submit the following comments regarding any changes.

The FCC consideration of the idea that existing Finder's Preference requests be dismissed is ill-advised, mis-informed, wrong, unfair and fraught with long-term harm to the FCC itself with regard to costs and their integrity.

First, if the FCC should exercise the "right" to dismiss existing applications that they have had before them for up to two years, it will expose them to almost certain court actions from a multitude of firms, associations, and individuals. While in our opinion the FCC would most likely lose any such suits, that is not the most important issue they should consider if they choose to dismiss them. Rather the delay in achieving the goal of getting these target frequencies "on-the-air" ought to be foremost in their minds and not having them tied up in court actions. Furthermore, if they dismiss pending requests and

No. of Copies rec'd  
List ABCDE

049

prevail in subsequent Court action, they would be rewarding parties that didn't play by the rules and punishing those that did play by the rules. Is it the intent of the FCC to take the side of such scofflaws? FCC rules said that a construction of the channels must be accomplished within one year. Preference Requests based on a target licensee's failure to do this not only point out a violation of Commission rules but also perjury by the target licensees who when queried by the FCC at the end of the construction year said that they had built them. Therefore, blanket dismissal of such preference requests would result in one party who lied and perjured themselves winning and the other party who followed the rules losing totally. Is this the American way?

What about those licensees that truthfully answered the FCC and admitted they had not constructed one or more channels? They lost their license because they played by the rules. Now all can see that if they had lied, they would have gotten to keep the channels. This creates a situation where those who don't follow the rules win and those who do abide by the rules lose. It certainly establishes a guide-line for future compliance choices.

Concerning the Preference filings before the FCC at present, what can happen to the target frequencies?

A: If the Commission dismisses these filings, then the target licensee will retain the effected channels. They will not revert back to the unassigned pool and be available for auction!

B: If the Commission acts on the filings and finds for the target licensee, the target licensee again retains the channels.

C: If the Commission acts on the filings and finds for the party filing the Finder's

Preference Request, the channels will soon be constructed and serving the public good.

If you have noticed, there is one common theme to the previous resolutions, the channels will not revert to the pool for auction! Should the FCC inject a 4th resolution by dismissing all filings in hand, but use the information to “take-away” the channels that had been filed on, they would really make for many happy lawyers.

The one solution that is faster than court actions, fair to all concerned and by far the least expensive for the FCC would be to decide each filing on it’s merits quickly, and quickly act on any appeal by any party.

Secondly, if the FCC wishes to address costs in their choice of which path to take, then the ending of the Finder’s Preference program with action by the FCC on all “in hand” requests will be both quicker and the less expensive course of action. On one hand, a case by case determination with award or denial by existing personnel is the only expense. On the other hand, the FCC will be faced with a multitude of long and expensive court cases with all its attendant expenses which it may very well loose. But even if the FCC should prevail in such cases, it would seen that they would have to refund all fees paid on such dismissed applications. At \$125.00 per channel, this would be a rather tidy sum of money.

Third, the statement that “the FCC wants to avoid the chance that some incumbents may get channels for free when others may have to pay for theirs” reveals a lack of understanding by the FCC as to what is involved by many parties to such requests; We are a party to a request that the FCC has had before it for more than one year for two channels. To date, our attorney fees as a result of this action exceed \$11,000.00. In

addition, we have substantial telephone expenses for consultations and fax expenses, plus all of the costs of our personnel's time in assembling the proof to substantiate our filings including pictures, auto expenses, typing and affidavits. We would estimate our total expenses at \$15,000.00 or more and at \$7,500.00 per channel, they are not free even if we win. Would the FCC be subject to these losses if they lost court actions?

We would suggest that it would be in the best interest of both the FCC and existing participants in the Finder's Preference Program if the FCC would end the program as of some date, replace it with a better program to achieve the FCC goals and then act on the existing requests in hand as of the ending date. This would be fair to all concerned, be quicker and less costly to the FCC and preserve the integrity of the FCC by making the statement of "we play by the rules, too."

Respectfully Submitted,

PATRICK ELECTRONICS, INC.

A handwritten signature in black ink, appearing to read "Don W. Patrick", written in a cursive style.

Don W. Patrick  
3701 Old Jenny Lind  
Fort Smith, AR 72941  
501-646-6141